

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**TRISTAR INVESTORS, INC.,**

**Plaintiff,**

**v.**

**AMERICAN TOWER CORPORATION,  
AMERICAN TOWERS LLC, AMERICAN  
TOWERS INC., AMERICAN TOWER  
GUARANTOR SUB, LLC, AMERICAN  
TOWER HOLDING SUB, LLC, AMERICAN  
TOWER ASSET SUB, LLC, AMERICAN  
TOWER ASSET SUB II, LLC, AMERICAN  
TOWER MANAGEMENT, LLC,  
AMERICAN TOWER L.P., SPECTRASITE  
COMMUNICATIONS, LLC, and  
AMERICAN TOWER, LLC,**

**Defendants.**

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**AMERICAN TOWER, LLC, SPECTRASITE  
COMMUNICATIONS, LLC, and  
AMERICAN TOWERS, LLC,**

**Counter-Plaintiffs,**

**v.**

**TRISTAR INVESTORS, INC., DAVID IVY,  
ED WALLANDER, ROBERT GILES, DALE  
GILARDI, JERRY VOGL, JOHN  
LEMMON, MICHAEL MACKEY, and  
MATT NEWTON,**

**Counter-Defendants.**

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**CIVIL ACTION NO. 3:12-CV-499**

**DEFENDANTS' ANSWER AND ADDITIONAL AFFIRMATIVE DEFENSES,  
TO COUNTS III AND IV OF PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendants American Tower Corporation, American Towers, LLC, American Tower Guarantor Sub, LLC, American Tower Holding Sub, LLC, American Tower Asset Sub, LLC, American Tower Asset Sub II, LLC, American Tower Management, LLC, American Tower, L.P., and SpectraSite Communications, LLC (collectively, “**American Tower**” or “**Defendants**”), for their Answer and Additional Affirmative Defenses to Counts III and IV of Plaintiff’s Second Amended Complaint, state as follows:

**DEFENDANTS’ ANSWER TO COUNTS III AND IV**

127. In response to Paragraph 127 of the SAC, American Tower incorporates by reference its responses to Paragraphs 1-126.

128. In response to Paragraph 128 of the SAC, American Tower denies the allegations of Paragraph 128.

129. In response to Paragraph 129 of the SAC, American Tower denies the allegations of Paragraph 129.

130. In response to Paragraph 130 of the SAC, American Tower denies the allegations of Paragraph 130.

131. In response to Paragraph 131 of the SAC, American Tower denies the allegations of Paragraph 131.

132. In response to Paragraph 132 of the SAC, American Tower incorporates by reference its responses to Paragraphs 1-131.

133. In response to Paragraph 133 of the SAC, American Tower denies the allegations of Paragraph 133.

134. In response to Paragraph 134 of the SAC, American Tower denies the allegations of Paragraph 134.

135. In response to Paragraph 135 of the SAC, American Tower denies the allegations of Paragraph 135.

136. In response to Paragraph 136 of the SAC, American Tower denies the allegations of Paragraph 136.

137. In response to Paragraph 137 of the SAC, American Tower denies the allegations of Paragraph 137.

138. In response to Paragraph 138 of the SAC, American Tower denies the allegations of Paragraph 138.

#### TWENTY-NINTH DEFENSE

Defendants adopt and incorporate herein by reference their Answer, Affirmative Defenses, and Counterclaims to Plaintiff's Second Amended Complaint, including their jury demand, and all prior motions to dismiss, as if set forth herein in their entirety.

#### THIRTIETH DEFENSE

In light of Plaintiff's incorporation by reference of various paragraphs and allegations in its Second Amended Complaint in ¶¶ 127 and 134, Defendants incorporate in their entirety all affirmative defenses raised in their Answer, Affirmative Defenses, and Counterclaims to Plaintiff's Second Amended Complaint, including, but not limited to all applicable privileges, immunities, and justifications.

#### THIRTY-FIRST DEFENSE

The factual allegations of Counts III and IV are so sparse, vague and uncertain that they fail to provide Defendants with fair and adequate notice of the nature of the claims, and the grounds upon which the claims rest, so as to deprive Defendants of due process of law.

#### THIRTY-SECOND DEFENSE

The statements of which Plaintiff complains are protected and non-actionable under the First Amendment of the United States Constitution and the Texas Constitution because, among other reasons, Plaintiff is a public figure and/or limited-purpose public figure, and the alleged statements were made without knowledge of falsity or reckless disregard of truth or falsity.

#### THIRTY-THIRD DEFENSE

The statements of which Plaintiff complains are not statements of fact and/or not reasonably understood as statements of fact.

THIRTY-FOURTH DEFENSE

Plaintiff failed to comply with the requirements of the Defamation Mitigation Act, Texas Civil Procedure & Remedies Code, §73.051, *et seq.*, and, thus, is not entitled to recover exemplary or other damages.

Dated: September 3, 2013

Respectfully submitted,

/s/ Michael L. Nepple  
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COUNSEL FOR DEFENDANTS/  
COUNTER-PLAINTIFFS

**CERTIFICATE OF SERVICE**

On September 3, 2013, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pre se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Michael L. Nepple  
Michael L. Nepple